

2002

State of Utah v. Scott Joseph Merrill : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

STATE OF UTAH, :
Plaintiff/Appellee, : OPENING BRIEF OF APPELLANT
v. :
SCOTT JOSEPH MERRILL, : Case No. 20020877 SC
Defendant/Appellant :

OPENING BRIEF OF APPELLANT

This is an appeal from an order denying the defendant's request to withdraw his guilty plea, in the Seventh Judicial District Court, the Honorable Bryce K. Bryner, Judge, presiding.

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SUPREME COURT

MAR 27 2003

CLERK OF THE COURT

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STATEMENT OF JURISDICTION

Utah Code Annotated § 78-2-2(3)(i) provides this Court's jurisdiction over the instant case involving a charge of a capital felony.

STATEMENT OF THE ISSUES

Does Utah Code Ann. § 77-13-6(2)(b) act as a jurisdictional bar to motions for withdrawal of pleas filed after the thirty day limitation prescribed by the statute when the passage of time is due to the defendant's mental illnesses at the time of the plea as well as during the period after the plea?

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following constitutional provisions, statutes and rules pertain:

Rule 11, Utah Rules of Criminal Procedure;
Rule 22(a), Utah Rules of Criminal Procedure;
Article I, section 11, Utah Constitution;
Article I, section 24, Utah Constitution;
Article V, section 1, Utah Constitution;

Fourteenth Amendment, United States Constitution.

STATEMENT OF THE CASE

SUMMARY OF PROCEEDINGS

On February 17, 2000, Scott Merrill was convicted of aggravated murder after entering a “no contest statement,” which the court treated as a plea of no contest. On November 21, 2001, Merrill filed a petition for post-conviction relief, explaining that during and after the entrance of the statement/plea, he was experiencing religious delusions caused by the medication he was taking. The petition explained that the claims had not been raised before because Merrill had learned of the side effects of his medication only weeks before filing the petition for post-conviction relief.

In order to aid his pursuit of post-conviction relief, the Court appointed counsel, who filed an amended motion to withdraw the plea, alleging that it was not knowingly and voluntarily entered as a result of Merrill’s medication. Judge Bryner of the Seventh District Court of Utah dismissed the motion to withdraw the guilty plea.

This case is now before the court on certiorari review of the Seventh District Court of Utah’s decision entered on October 10, 2002, which cited a lack of jurisdiction in hearing the defendant’s motion to withdraw his guilty plea; see opinion in Addendum A to Petitioner’s brief on certiorari. The District Court held that, pursuant to Utah Code Ann. § 77-13-6(2)(b) and State v. Reyes, 2002 UT 13, 40 P.3d 630, it lacked jurisdiction to hear petitioner’s motion to withdraw his guilty plea.

The defendant petitioned for certiorari review, arguing that § 77-13-6(2)(b) does

not jurisdictionally bar the trial court from hearing a motion to withdraw a guilty plea regardless of the lapse of the thirty day period prescribed by the statute. In addition, the petitioner/defendant contends that the District Court's interpretation of Reyes is a violation of the defendant's constitutional rights. In particular, the petitioner/defendant challenges the District Court's ruling that § 77-13-6(2)(b) creates a jurisdictional bar since the thirty day period lapsed as a result of the defendant's mental illnesses.

STATEMENT OF FACTS

According to discovery materials, on October 29, 1998, a county road grader was found on a road with the windows broken out, and multiple gunshots penetrating the vehicle. The vehicle operator, Charles Watterson, was found nearby, dead of multiple gunshot wounds. The defendant was discovered rather coincidentally in a motel in Green River, and later investigation of the area between Green River and the crime scene by the Emery County Sheriff's Office yielded a weapon and ammunition, and a nearby "camp" yielded personal items belonging to the defendant.

When he was first taken to the Emery County Sheriff's office, the defendant indicated that he "had no name and he didn't believe in our system". He asked to be called Joseph, was provided his Miranda rights, and asked for a lawyer. His belongings were subsequently searched, and a variety of items were found, including another weapon. Investigation of the area near the San Rafael bag yielded 800 .22 caliber cartridges, a map of the Western United states with the heading crossed out and "People Islamic Front" written above it and "Constitutionalist" written on the bottom of the map.

The investigation of the area continued for several days, and on November 2 another weapon was discovered near eastbound I-70, as well as two more boxes of cartridges, each containing 40 rounds. Other belongings were found at other sites along an approximately 10 mile corridor, including MREs (prepackaged foods used for military, food storage, or camping purposes) and items of clothing. It appeared that the defendant had exited an eastbound Amtrak train in Green River on October 25, spent several nights at different camps in the desert, and allegedly shot Mr. Watterson on October 29, after which he checked in to a motel in Green River until he was questioned and taken into custody. He was charged with Aggravated Murder, a Capital Offense in violation of Utah Code Ann. § 76-5-202(d).

Cohn Report, page 2.

The Cohn report of January 15, 2000, details Merrill's mental illnesses. According to the report, Merrill is a paranoid schizophrenic who suffers from paranoid delusions and might also suffer from the bipolar type of a schizoaffective disorder. *Id.* at 14-15. He has been diagnosed with Post Traumatic Stress Disorder, *id.* at 8, and might also suffer from Gulf War Syndrome. *Id.* at 6 n.2. One physician suggested that Merrill might have bipolar disorder. *Id.* at 8. Cohn's evaluation was not complete, and did not address organic problems from past brain injuries and exposures to toxic agents. *Id.* at 12.

According to the report, Merrill was operating under a "floridly psychotic belief system" near the time of the incident. *Id.* at 14. Merrill began having religious revelations, became a Moslem, and ceased taking Zoloft five (5) days prior to the

offenses. Id. at 9. Cohn described Merrill as increasingly paranoid and depressed and indicated that Merrill suffered from delusions when he came to Green River, and continued to suffer from delusions at the time she wrote the report, January 15, more than a full year after the incident for which he was charged. Id. at 9-10. Merrill began taking Zoloft again after being in the jail. Id. at 10. However, he refused to take any antipsychotic medications, other than the antidepressant, Zoloft. Id. at 15. Cohn wrote in her report on January 15, “Mr. Merrill continued to express ideas that were unusual, and indicative of what I believe is an ongoing psychotic process.” Id. at 11.

Merrill’s testing on MMPIs reflects paranoia and delusions, and her report explains that because of substantial problems with logical and coherent thinking, he may be less capable than others in making good decisions about the relationships between the meaning of events. Such misperceptions of events, and mistaken interpretations of people and the significance of their actions may be conceptualized as a kind of confusion in separating reality from fantasy, and can lead to adjustment problems and inappropriate behavior. Id. at 13.

On February 17, 2000, about a month after Dr. Cohn wrote the report, Mr. Merrill was convicted of aggravated murder after entering a “no contest statement” which the Court treated as a plea of no contest. At the change of plea and sentencing hearing, Cohn opined that Merrill was competent, and that he was taking only Zoloft for depression, which had no effect on his cognitive process or competency. T. 2/17/2000 at 5-6.

Dr. Cohn testified that his “symptoms of mental illness” were “in substantial remission,” but no one questioned the basis for these statements, even though he had refused all psychotropic medications other than the antidepressant, Zoloft. T. at 6; Cohn report at 15.

Merrill’s conduct at the plea hearing reflected extreme mental illness. He refused to enter a plea at the hearing, instead insisting on entering a “no contest statement.” Id. at 7. He refused to concede that his conduct constituted aggravated murder, but conceded that “the State may consider that.” Id. at 15. In the colloquy, Merrill maintained that the Zoloft was not affecting his judgment, and that no one had made any promises to induce the plea, other than those stated in the plea agreement. Id. at 16.

However, the Statement of Defendant and Rule 11(h)(2) Disposition provided, “I understand the laws of the State of Utah interpret my conduct as unlawful and criminal. According to my personal beliefs, my actions of October 29, 1998, were morally correct and lawful.” Id. at page 2. “I acknowledge that I intentionally shot and killed Charles W. Watterson with a firearm while he was grading a road in Emery County on October 29, 1998, and that I shot the victim, I intentionally took items of personal property from the victim’s person.” Id. at 5.

Merrill’s statement also indicated,

On October 29, 1998, I found myself in Emery County, State of Utah. At that time and place, I encountered Mr. Watterson, who was operating a piece of heavy equipment in a remote area. Prior to the morning of October 29, 1998, I had not seen or been in contact with Mr. Watterson. Having received an order from God to deliver justice by means of the firearms in

my possession, I proceeded to obey the “order.” Moving to a concealed position in the rocks overlooking the road, awaiting the arrival of the equipment operator, I prepared to execute the “order” from God. As the grader and Mr. Watterson traveled to an area parallel to my location, I fired my weapon into Mr. Watterson and did not stop firing until he was dead (approximately seven seconds).

I acknowledge that my conduct constitutes a crime under Utah law and constitutes a violation of Utah Code Ann. § 76-5-202(1)(d). However, in my mind I received a commandment from God that superseded Utah law and did not believe that I was in a position to do anything but follow that command.

Id. at 5.

Sometime beyond thirty days after Merrill had been sentenced, Merrill contacted his attorneys, Ken Brown and Mark Moffat, seeking to withdraw his guilty plea. Counsel were astounded by the radical change in Merrill’s demeanor, communication and affect, and began to prepare documents seeking to withdraw Merrill’s plea, which they had come to believe was entered when Merrill was psychotic and delusional.

On November 21, 2000, Mr. Merrill filed a petition for post-conviction relief, explaining that during and after the entry of the statement/plea, he was experiencing religious delusions that he subsequently felt were caused by the medication he was taking. Post conviction Petition at page 3. In the petition, Merrill alleged that the plea was entered without competent understanding, as a result of religious delusions caused by Zoloft. Post conviction Petition at 7. Merrill alleged that at the time of the entry of his plea, he was diagnosed as a paranoid schizophrenic and on medication, and that defense counsel was aware that as a result of his mental condition, he was not competent to enter

a plea, and yet they unduly influenced him to do so. Post conviction petition at 8. Merrill also alleged that defense counsel were ineffective in failing to investigate whether Zoloft influenced Merrill in the commission of the crime, or in the entry of his plea. Post conviction petition at 9. The petition explained that the claims had not been raised before, because Merrill had learned of the side effects of Zoloft only weeks before filing the petition for post-conviction relief. Post conviction petition at 9.

Contemporaneously with filing the petition, Merrill sought appointment of counsel to aid in his pursuit of post-conviction relief, and submitted an affidavit of impecuniosity establishing his indigence. After the prosecution successfully conflicted Brown and Moffat off the case, this Court appointed counsel, who filed an amended motion to withdraw the plea alleging that it was not knowingly and voluntarily entered as a result of the side effects of Merrill's psychiatric medication. Prior to the evidentiary hearing sought in the amended motion to withdraw his guilty plea, the Court requested briefing and oral argument on the effect of the thirty day time limit of Utah Code Ann. § 77-13-6(2). The District Court held that § 77-13-6(2)(b) acted as a jurisdictional bar on the trial court, and thus the court lacked jurisdiction in the instant case. The defendant/petitioner hereby appeals the ruling of the District Court.

SUMMARY OF THE ARGUMENT

The District Court incorrectly held that Utah Code Ann. § 77-13-6(2)(b) acts as a jurisdictional bar to motions for withdrawal of pleas filed after the thirty day limitation prescribed by the statute. Because of the defendant's mental illnesses at the time of the

plea as well as during the period after the plea, the provisions of § 77-13-6(2)(b) can not apply to Mr. Merrill as a matter of law. The District Court's interpretation of the statute and its reliance on the decision in State v. Reyes violate the doctrine of separation of powers, the open courts provision, the right to due process of law, the right to equal protection, and the right to uniform operation of the law. Under a correct interpretation of Utah Code Ann. § 77-13-6(2)(b) that meets the requirements posed by the Utah Constitution and the United States Constitution, respectively, the thirty day period is merely directory. The Court should rule that the thirty day limit set forth in § 77-13-6(2)(b) is not jurisdictional, and should extend that limit to permit Mr. Merrill to proceed with his motion to withdraw his guilty plea.

STANDARD OF REVIEW

The Supreme Court reviews the District Court's interpretation of a statute for correctness and gives no deference to its conclusions of law. State v. Ostler, 31 P.3d 528, 529 (Utah 2001). Newspaper Agency Corp v. Auditory Div. Of the Utah State Tax Comm'n, 938 P.2d 266, 267 (Utah 1997).

ARGUMENT

“[I]f the proper showing is made, the mere passage of time can *never* justify continued imprisonment of one who has been deprived of fundamental rights, regardless of how difficult it may be for the State to re prosecute that individual.” Julian v. State, 966 P.2d 249, 254 (1998) (emphasis in original).

“What is at stake for an accused facing death or imprisonment demands the utmost

solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences.”

Boykin v. Alabama, 395 U.S. 238, 233-34 (1969).

I. THE THIRTY DAY LIMITATION SET FORTH IN UTAH CODE ANN. § 77-13-6(2)(b) DOES NOT CREATE A JURISDICTIONAL BAR.

Rules of statutory construction and analysis of other statutes and rules that create time bars demonstrate that Utah Code Ann. § 77-13-6(2)(b) does not jurisdictionally bar a trial judge from hearing a meritorious motion to withdraw a guilty plea. Since the plain language interpretation of the statute does not unambiguously determine whether the time limit is jurisdictional, legislative history and policy consideration must be contemplated. Moreover, the statute must be interpreted so that it does not violate constitutional protections. When analyzed collectively, the policy considerations and the constitutional guarantees of due process, equal protection, separation of powers, and the open courts doctrine demonstrate that the time limit of § 77-13-6(2)(b) is not jurisdictional. In addition, because similar statutes are not jurisdictional in nature, treating the time limit on motions to withdraw guilty pleas as jurisdictional is therefore an aberration under our criminal justice system.

A. The Language of the Statute, Policy Considerations, Legislative History, and Case Law Holding that Similar Statutes are Not Jurisdictional Demonstrate that the Time Limit of Utah Code Ann. § 77-13-6(2)(b) Does Not Create a Jurisdictional Bar.

While Utah Code Ann. § 77-13-6(2)(b) requires a request to withdraw a plea be

filed within 30 days of entry of the plea, the statute does not indicate whether that statute is jurisdictional or simply directory. The statute is therefore facially ambiguous as to the creation of a jurisdictional bar, and this Court should consider the language of the statute, case law interpreting statutes and rules with roughly analogous time bars, policy considerations, and legislative history in determining whether the 30-day limitation imposed by § 77-13-6(2)(b) is jurisdictional. See State v. Garcia, 965 P.2d 508, 512 (Utah 1998).

In similar circumstances in which a statute or rule imposes a time bar in the trial court of a criminal case, the Court of Appeals has held that the time bar is not jurisdictional in nature. For example, in James v. Galetka, 965 P.2d 567 (Utah App. 1998), the Court of Appeals held that the statutes of limitations in a criminal case are not jurisdictional and can be waived. Id. at 572-573 (noting that cases from other jurisdictions “holding that the statutes of limitations are not jurisdictional are the *better reasoned* cases.”) (emphasis added). In reaching its decision, the Court also indicated that the statutes of limitations in civil cases are not jurisdictional and can be waived as a matter of law. Id. at 571.

Similarly, the Court in State v. Tyree, 2000 UT App 350, also supports the conclusion that the 30-day limit is not jurisdictional. In Tyree, the Court held that Utah R. Crim. P. 22(a), which requires that criminal defendants be sentenced within 45 days of the plea hearing or verdict, does not create a jurisdictional bar to sentencing a defendant more than 45 days after the plea proceeding. Id., ¶15. The Court reasoned in part that

since the statute contained an exception that allowed the 30-day maximum to be extended “with the concurrence of the defendant,” the rule was therefore not jurisdictional. *Id.*, ¶8. In addition, the Court pointed out that the change in the rule requiring that a court “shall” sentence a defendant within 45 days of verdict or plea did not establish that the rule created a jurisdictional bar to sentencing after that date since the term “shall” does not always mean that a provision is mandatory. *Id.*, ¶9 (further citations omitted).

Like statutes of limitations in criminal cases and Utah R. Crim. P. 22(a), the 30-day provision of § 77-13-6(2)(b) does not create a jurisdictional bar to a trial court’s consideration of a motion to withdraw a plea after the time has passed. Since statutes of limitations in criminal cases are not jurisdictional, it would be inconsistent to make a time bar on a motion to withdraw a plea in a criminal case over which the trial court has jurisdiction a jurisdictional bar. Moreover, since Rule 22(a) is not mandatory, consistency requires a similar interpretation of the time bar in § 77-13-6(2)(b). In other words, just as the exceptions to the absolute time limit in Rule 22(a) preclude that rule from creating a jurisdictional bar, the exception to the jurisdictional nature of § 77-13-6(2)(b) precludes the 30-day rule from being jurisdictional. *See Tyree*, 2000 UT App 350, ¶8.

A survey of related provisions of Utah law confirms that trial courts have the authority to extend the time for filing motions to withdraw guilty pleas, and are *not* deprived of jurisdiction over such motions filed outside the thirty day time period. For example, Utah Rule of Criminal Procedure 11, which governs pleas, states in subsection

(f),

Failure to advise the defendant of the time limits for filing any motion to withdraw a plea of guilty, no contest or guilty and mentally ill is not a ground for setting the plea aside, but *may be the ground for extending the time to make a motion under Section 77-13-6*.(emphasis added).

In addition, appellate courts routinely remand matters to the trial courts for withdrawal of pleas entered months or years prior. See e.g., State v. Valencia, 776 P.2d 1332 (Utah App. 1989); State v. Sery, 758 P.2d 935 (Utah App. 1988) (holding that, pursuant to Utah R. Crim. P. 11(i), a defendant can withdraw his or her plea following appeal if the appellate court reverses the trial judge's ruling on an issue which has been reserved for appeal regardless of whether such motions are made more than 30 days after the plea proceeding).

Policy considerations also support a determination that the 30-day limitation does not create an absolute bar to a trial court's ability to hear a motion to withdraw a guilty plea. Where a plea is unlawful, as in the instant case, the trial judge who is familiar with the case should have an opportunity to consider all of the relevant circumstances in determining whether the plea should ultimately be withdrawn when the defendant later requests withdrawal of the plea.

If the thirty day time limit were considered a jurisdictional bar, this would imprudently squander precious judicial resources, for a defendant can seek post-conviction relief under § 77-13-6(3) regardless of time limitations. Requiring a defendant to exhaust appellate remedies and go through lengthy post-conviction proceedings,

however, would obviously expend considerable resources that are best used by granting the trial courts that are most familiar with the cases the authority to hear motions to withdraw guilty pleas that are based on good cause.

The language of the statute, policy considerations, legislative history, and case law interpreting similar time bars all support the conclusion that § 77-13-6(2)(b) does not create a mandatory time bar. Accordingly, this Court should hold that the provision is directory only and a trial court has jurisdiction to consider a motion to withdraw a guilty plea regardless of when it is filed.

B. Due Process, Equal Protection, Separation of Powers, and the Open Court Doctrine Require that the Time Bar of § 77-13-6(2)(b) is Not Jurisdictional.

Whenever possible, a statute must be interpreted so as not to conflict with constitutional requirements. See State v. Mohi, 901 P.2d 991, 1009 (Utah 1995); Provo City Corp. v. State by and through Dep't of Transp., 795 P.2d 1120, 1125 (Utah 1990).

The district court's interpretation of § 77-13-6(2)(b) violates due process, equal protection, the doctrine of separation of powers, and the open courts doctrine.

Accordingly, that interpretation should be rejected and this Court should hold that the 30-day limitation provided by § 77-13-6(2)(b) is directory only and in no way creates a jurisdictional bar to a trial court hearing a motion to withdraw a guilty plea.

i. A Jurisdictional Bar to Filing a Motion to Withdraw a Guilty Plea in the Trial Court Violates the Separation of Powers and Open Courts Provisions.

Utah Const. Art. V, § 1 guarantees the separation of powers in state government.

“[T]he separation of powers provision, Article V, section 1 of the Utah State Constitution, requires, and the Open Court Provision of the Declaration of Rights, Article I, section 11, presupposes, a judicial department armed with process sufficient to fulfill its role as the third branch of government.” Hurst v. Cook, 777 P.2d 1029, 1033-34 (Utah 1989).

This Court held in Julian v. State, 966 P.2d 249, 253 (Utah 1998) (quoting Currier v. Holden, 862, P.2d 1357, 1368 n. 18 (Utah App. 1993)) that the four-year catchall statute of limitations for habeas corpus petitions found in Utah Code Ann. § 78-12-25(3) (1996) violates the state constitutional separation of powers and open court provisions since it “remove[d] flexibility and discretion from state judicial procedure, thereby diminishing the court’s ability to guarantee fairness and equity in particular cases.” This Court recognized the importance of habeas writs in “protecting fundamental constitutional rights” and that the writ, which provides a remedy for people who are “imprisoned in violation of due process,” is “one of the most important of all judicial tools for the protection of liberty.” Id. at 253 (citations omitted). The statute of limitations undermined the ability of the judicial department to “ ‘fulfill its role as the third branch of government’ ” by precluding the judicial branch from fairly and equitably administering cases. Id.

Moreover, in analyzing the one-year statute of limitations for habeas petitions found in Utah Code Ann. §78-35a-107 (1996) and the “interests of justice” exception in that statute, this Court recognized that “proper consideration of meritorious claims raised in a habeas petition will *always* be in the interests of justice. It necessarily follows that *no*

statute of limitations may be constitutionally applied to bar a habeas petition.” Julian, 966 P.2d at 254. In reaching that decision, this Court considered the state’s argument that the passage of time makes it difficult for the state to defend against attack on the conviction or to reprosecute the case. Id. While this Court acknowledged those concerns, it rejected them as a basis for precluding a trial court from hearing a meritorious petition for writ of habeas corpus attacking a conviction. Id. As this Court noted,

We fully appreciate the State’s concerns. We emphasize, however, that when a court grants relief pursuant to a habeas corpus petition, it does so on the ground that the petitioner has been wrongfully incarcerated. [citation omitted] That is to say, a court should grant relief if the petitioner establishes that he or she has been deprived of due process of law or that ‘it would be unconscionable not to re-examine the conviction.’ [citation omitted] Therefore, *if the proper showing is made, the mere passage of time can never justify continued imprisonment of one who has been deprived of fundamental rights, regardless of how difficult it may be for the State to reprosecute that individual.*

Id. (emphasis added).

The same concerns that led this Court to reject the statute of limitations in habeas cases apply in the instant case. Precluding a trial court from hearing a motion to withdraw a guilty plea entered in that court “remove[s] flexibility and discretion from state judicial procedure, thereby diminishing the court’s ability to guarantee fairness and equity in particular cases.” Julian, 966 P.2d at 253 (citation omitted). Just as the writ of habeas corpus provides an essential protection of fundamental rights and offers a remedy for violations of due process, a trial court’s authority to withdraw an unconstitutional plea, regardless of when the request is made, protects fundamental rights by providing a

remedy for violations of due process that occur in taking pleas. Allowing a trial judge to hear a meritorious motion to withdraw a plea regardless of when the motion is filed allows the judicial branch to fulfill its role as a distinct and separate branch of government and its duty to fairly and equitably administer justice.

Most importantly, when a plea is taken in direct violation of due process, a defendant has been wrongfully incarcerated and any failure to re-examine the conviction would be unconscionable. *Id.* at 253. Since “the mere passage of time can *never* justify continued imprisonment of one who has been deprived of fundamental rights” (*id.*), defendants must be given access to the courts in order to challenge their conviction obtained in violation of their constitutional rights.

ii. The District Court’s Interpretation of Utah Code Ann. § 77-13-6(2)(b) Violates Due Process and Equal Protection.

Due Process requires that the state prove beyond a reasonable doubt that the defendant committed a crime in order to sustain a conviction. *In re Winship*, 397 U.S. 358, 361-63 (1970). Due process also requires that if the defendant does not hold the state to its requisite burden of proof and instead pleads guilty, it is axiomatic that the guilty plea itself must be knowingly and voluntarily made. *Boykin v. Alabama*, 395 U.S. 238 (1969). As the Supreme Court noted in *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938),

A defendant who enters such a plea [a guilty plea] simultaneously waives several constitutional rights, including his privilege against self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be an intentional relinquishment or abandonment of a known right or privilege.

Because there are questions regarding Merrill's competency to enter a plea, this Court must find that the requirement of § 77-13-6(2)(b) is directory and remand the case to decide whether the defendant was legally capable of entering his plea. The court in Johnson provides further guidance on the due process of law required for guilty pleas, stating,

[I]f a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot truly be voluntary unless the defendant possesses an understanding of the law in relation to the facts.

Id. at 466. See also Julian, 966 P.2d 249, 254 (Utah 1998) (referring to due process in a criminal proceeding as a fundamental right); Smith v. O'Grady, 312 U.S. 329, 334 (1941) (noting that a plea cannot be voluntary unless the defendant received "real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process."); Salazar v. Warden, Utah State Prison, 852 P.2d 988, 991 (Utah 1993) (recognizing the invalidity of any guilty plea that is not knowing and voluntary). Merrill and other similarly situated defendants do not have a means by which they can reappear before the trial court and have these due process rights enforced if they do not file a motion to withdraw their pleas within thirty days. Thus, the interpretation of § 77-13-6(2)(b) by the district court, which bars a trial judge from hearing the motion to withdraw, violates due process since the court has not determined whether the plea was knowing and voluntary.

In addition, the district court's interpretation of § 77-13-6(2)(b) violates equal

protection and uniform operation of laws by differentiating between defendants who can withdraw their illegal pleas based solely on the time at which the defendant files a motion to withdraw. The Equal Protection clause provides equal protection to all persons similarly situated. When legislation creates classifications that impinge upon a fundamental interest, the statute is upheld only if it furthers a compelling state interest. See State in the Interest of N.R., 967 P.2d 951, 953-54 (Utah App. 1998); Carey v. Brown, 447 U.S. 455, 461-62 (1980) (strict scrutiny test requires that “the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized”); Mohi, 901 P.2d at 995 (statute must be reasonable in relation to state’s need to enact it).

Article I, section 24 of the Utah Constitution requires that all laws have uniform operation. At least in the context of economic legislation, this constitutional protection is as rigorous as the protection provided by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. See Blue Cross and Blue Shield of Utah v. State, 779 P.2d 634, 637 (Utah 1989). This Court has indicated that the tests of “strict scrutiny” and “rational basis” are not helpful in assessing whether legislation violates the uniform operations of the law provision. Ryan v. Gold Cross Services, Inc., 903 P.2d 423, 426 (Utah 1995). Rather than employing strict scrutiny or rational basis tests, the analysis for determining whether a statute violates Article I, section 24 is “(1) whether the classification is reasonable, (2) whether the legislative objectives are legitimate, and (3) whether there is a reasonable relationship between the two.” Id. at 426 (citing Blue

Cross, 779 P.2d at 637).

The right in a criminal case to have the state prove its case beyond a reasonable doubt and the concomitant due process right to be convicted of a crime based on a plea of guilty only when the plea is knowingly and voluntarily made, are of fundamental importance. See Julian, 966 P.2d at 254 (referring to deprivation of due process in a criminal proceeding as a fundamental right); Lyon v. Burton, 2000 UT 19, ¶20, 5 P.3d 616 (“A just and peaceful society must secure by law the fundamental rights of all its citizens”; these fundamental rights include criminal law sanctions). Moreover, these due process rights directly implicate the right to liberty and therefore are fundamental. See Chapman v. United States, 500 U.S. 453, 465 (1991) (further citation omitted) (“Every person has a fundamental right to liberty in the sense that the Government may not punish him unless and until it proves his guilt beyond a reasonable doubt at a criminal trial conducted in accordance with the relevant constitutional guarantees.”). Because the ruling in the district court directly subjugates a criminal defendant’s exercise of his due process rights and liberty interests to the requirement provided by § 77-13-6(2)(b), the statute is subject to strict judicial scrutiny under equal protection analysis.

The State does not have a compelling need to limit the time in which a defendant can move the court to withdraw an illegal plea to thirty days. In fact, this Court has recognized that the state’s interest in limiting the time in which a defendant can challenge a due process violation is not significantly compelling to warrant the imposition of a statute of limitations of habeas petitions. Julian, 966 P.2d at 254. The Court’s statement

in Julian that “if the proper showing is made, the mere passage of time can *never* justify continued imprisonment of one who has been deprived of fundamental rights, regardless of how difficult it may be for the State to re prosecute the individual” resolves the question of whether the State has a compelling interest that would justify the classification. Id. Because the state’s interest in re prosecuting the individual in a speedy fashion does not justify a time limit on claiming a deprivation of fundamental rights, section 77-13-6(2)(b) violates equal protection.

Application of Article I, Section 24 uniform operations of the law test also demonstrates that the district court’s interpretation of § 77-13-6(2)(b) is unconstitutional. If the thirty day requirement of § 77-13-6(2)(b) were considered jurisdictional, the statute would violate uniform operation of laws. First, the statute would classify those defendants who can obtain immediate relief from an unconstitutional plea through a motion to withdraw, and those who must exhaust appellate remedies and then seek post-conviction relief.

The classes would be subjected to significantly disparate treatment, not only because of the passage of time a defendant may spend incarcerated while going the more circuitous route through appeal and post-conviction proceedings, but also because defendants are not entitled to appointed counsel in post-conviction proceedings unless they are under a sentence of death. Compare Utah Code Ann. § 78-35a-109 (indicating that if court finds potential merit in petition, and feels that counsel would be helpful to complete an evidentiary hearing or to resolve complicated issues of law or fact, court may

appoint counsel, but only on a pro bono basis) with Utah Code Ann. § 78-35a-202 (courts must appoint qualified counsel in death penalty cases, and state must compensate counsel).

In addition, the legislative objectives are not compelling. There is no reasonable objective to warrant such disparity between defendants who file motions to withdraw within or outside the thirty day period. See, e.g., Mohi 901 P.2d 991 (Utah 1995). Again, while this Court has acknowledged the state's concerns about the increased difficulty in prosecuting a case after time has elapsed, it has specifically rejected the contention the such increased difficulties establish an adequate basis for depriving an individual of fundamental rights based solely on the passage of time. See Julian, 966 P.2d at 254. In this particular case, the thirty day requirement is acutely unfair and deprives the defendant of fundamental rights simply because the thirty day time period elapsed. Because the time period elapsed because of Merrill's mental illnesses, it would be patently and fundamentally unfair to deny him relief that he could have obtained had he not be stricken with mental illnesses.

II. THE DISTRICT COURT'S RELIANCE ON REYES IS MISPLACED AND SHOULD NOT BAR THE DISTRICT COURT FROM HEARING MERRILL'S MOTION TO WITHDRAW HIS PLEA.

In reaching its decision, the District Court relied on the decision of this Court in State v. Reyes, 2002 UT 13, 40 P.3d 630, which dealt with whether the court had jurisdiction to address the validity of a plea. In Reyes, the defendant failed to raise the issue of illegal or improper sentence on appeal and therefore waived that issue. The

defendant instead attacked the propriety of his guilty plea, arguing that the trial court erred by failing to comply with Rule 11 of the Utah Rules of Criminal Procedure. On appeal, this Court held that it did not have jurisdiction to address the validity of the plea when the defendant had not filed a motion to withdraw a guilty plea within thirty days.

The decision in Reyes, however, does not address whether § 77-13-6(2)(b) provides a jurisdictional bar when the defendant moves the court to withdraw a guilty plea after the thirty day period in the trial court. Reyes only focused on whether the Supreme Court had jurisdiction to determine the validity of a plea when the defendant had *never* moved to withdraw it in the trial court. See id. at ¶¶3 through 5. The instant case is thus distinguishable from the decision this Court reached in Reyes.

Although Reyes does include language that is helpful to the State's position, that language can only be considered dictum since this Court reached its decision based on the fact that the defendant in Reyes never moved the trial court to withdraw his guilty plea.

As the Court in Reyes stated,

Section 77-13-6 of the Utah Code was amended in 1989 to require a defendant to file a motion to withdraw a guilty plea within thirty days after the entry of the plea. Utah Code Ann. § 77-13-6 (1999). We have held that failure to do so extinguishes a defendant's right to challenge the validity of the guilty plea on appeal. See State v. Abeyta, 852 P.2d 993, 995 (Utah 1993) (noting that "the plea statute limits a defendant's right to withdraw his or her guilty plea to thirty days after entry of the plea" and that "thereafter, the right is extinguished"); State v. Ostler, 2001 UT 68, P10, 31 P.3d 528 (noting that "because State v. Johnson, 856 P.2d 1064, 1067 (Utah 1993), requires a defendant to move for a withdrawal in the district court before he can challenge a plea on appeal, his appeal rights on the plea question could be cut off."). Accordingly, because Reyes did not move to withdraw his guilty plea within thirty days after the entry of the plea, we lack jurisdiction

to address the issue on appeal.

Reyes at ¶ 3.

The portion of Abeyta cited by the Court in Reyes was uttered in a limited context. The court in Abeyta was deciding whether the amendment enacting the thirty day time limit for withdrawing pleas could be applied retroactively. In this context, the court stated,

The amendment to the plea statute limits a defendant's right to withdraw his or her guilty plea to thirty days after entry of the plea. Thereafter, the right is extinguished. The amendment is therefore substantive, not procedural, as argued by the State, and may not be applied retroactively. Utah Code Ann. §§68-3-3. We conclude that the trial court erred in barring Abeyta's motion to withdraw the guilty plea, as the amendment did not apply.

Given the limited holding of Abeyta, its dictum quoted in Reyes certainly did not dictate the conclusion of Reyes, namely that the Utah Supreme Court did not have jurisdiction to address an improper plea absent a motion to withdraw having previously been filed. Nor did Abeyta hold that this Court has no jurisdiction to withdraw a plea if the motion to withdraw is filed outside the thirty day limit.

The Court in State v. Ostler, 2001 UT 68, likewise did not answer any jurisdictional question, although it was raised, because Ostler's motion to withdraw was timely filed under the court's interpretation of the plea withdrawal statute. See id. The language from Ostler quoted in Reyes again originated in a very narrow context, one in which the court explained why the thirty day limit had to run from the date of sentencing, rather than from the date of the plea hearing. The language of Ostler quoted

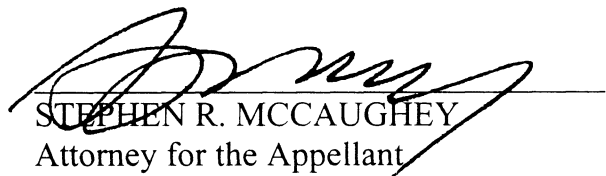
in Reyes in no way compelled the result reached in Reyes, nor does it answer the question before this Court, whether the thirty day time limit poses a jurisdictional bar in district court. Had the defendant in Reyes moved the trial court to withdraw his plea and the supreme court subsequently dismissed for want of jurisdiction, the decision would be controlling precedent; because the defendant waited until he was before the supreme court to move the court to withdraw his plea, however, the issue of whether § 77-13-6(2)(b) acts as a jurisdictional bar on the trial court was left unresolved by the court in Reyes. Thus, the court in Reyes never specifically addressed the jurisdictional question, leaving the question of jurisdiction open for this court to decide.

Unlike the defendant in Reyes who waited eight years to challenge his sentence in the trial court and subsequently challenge the legal sufficiency of his plea in the state supreme court after having failed to raise the issue on appeal at the trial court, the lapse of the thirty day period prescribed by § 77-13-6(2)(b) was due to the Merrill's mental illness and his appeal was made at the trial court level. In the instant case, denying the trial court jurisdiction to hear Merrill's motion to withdraw would work a substantial injustice on the defendant and run afoul of the due process to which he is entitled. The drafters of the statute could hardly have intended that the statute preclude defendants incapable of fully understanding and appreciating the legal consequences of their actions from going forward with potentially viable claims once they were legally competent to do so.

CONCLUSION

The interpretation of the District Court is not firmly grounded in Utah criminal law precedent, and also violates the defendant's constitutional rights. This Court should reject the holding of the District Court and the dicta of Reyes and correctly interpret § 77-13-6(2)(b) as creating a thirty day limitation that is directory only. In the instant matter, in which Scott Merrill was mentally ill at the entrance of the plea and the time following the plea, any interpretation that precludes the trial court from hearing his motion to withdraw his plea is a deprivation of his fundamental rights guaranteed by the Utah and United States Constitutions. Petitioner respectfully requests that this Court rule that the thirty day limit of § 77-13-6(2)(b) is not jurisdictional, and further requests that this Court extend that limit to permit Mr. Merrill to proceed with his motion to withdraw his guilty plea.

DATED this 27th day of March, 2003.


STEPHEN R. MCCAUGHEY
Attorney for the Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of March, 2003, I served two copies of the attached Opening Brief of Appellant to the following:

Assistant Attorney General
Criminal Appeals Division
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854

A handwritten signature in black ink, appearing to be "J. M. M.", written over a horizontal line.

ADDENDUM

Ruling on Amended Motion to Withdraw Plea of Guilty Tab A

**IN THE SEVENTH DISTRICT COURT IN AND FOR
EMERY COUNTY, STATE OF UTAH**

STATE OF UTAH,)	RULING ON AMENDED
)	MOTION TO WITHDRAW
Plaintiff,)	PLEA OF GUILTY
VS)	
SCOTT JOSEPH MERRILL,)	Criminal No 981700132
Defendant)	Judge Bryce K Bryner

The defendant filed an *Amended Motion to Withdraw Guilty Plea* to which the plaintiff filed a *Memorandum in Opposition*. A *Reply Memorandum* was filed and the court now issues the following ruling

I Background

On February 17, 2000, the defendant entered a plea of no contest to the crime of Aggravated Murder, a capital offense, and was sentenced on the same day to imprisonment at the Utah State Prison for life with the possibility of parole. The defendant filed a Petition for Post-conviction Relief on November 21, 2000, alleging ineffective assistance of counsel and that he entered the plea without competent understanding as a result of religious delusions caused by Zoloft, a prescription medication. The court appointed new counsel who filed a Motion to Withdraw Guilty Plea on April 11, 2001, and an Amended Motion to Withdraw Plea of Guilty on April 26, 2001, alleging that because of the psychiatric medication he was taking at the time of his plea, his state of mind was such that the guilty plea was not knowingly and voluntarily made. Responsive memorandum were filed and oral argument was held.

II The Issue Presented

Section 77-13-6(2) Utah Code Annotated states

(2)(a) A plea of guilty or no contest may be withdrawn only upon good cause shown and with leave of court

(b) A request to withdraw a plea of guilty or no contest is made by motion and shall be made within 30 days after the entry of the plea

It is clear that the original Motion to Withdraw Guilty Plea, which was filed on April 11, 2001, was filed more than thirty days after sentencing on February 17, 2000. The issue therefore presented is whether the thirty day time limit after entry of judgment is a jurisdictional bar to motions to withdraw a guilty plea filed more than thirty days after final disposition in the district court.

III Analysis

The court notes that Supreme Court of Utah in State v. Ostler, 31 P 3d 528 (Utah 2001) and State v. McGee, 31 P 3d 531 at 531, held that the thirty-day limitation on the filing of a motion to withdraw a plea of guilty or no contest runs from the date of "final disposition" of the case at the district court, and not from the date of the plea colloquy. The Supreme Court further clarified in a footnote at the bottom of page 531 that final disposition means "the entry of final judgment of conviction at the district court." However, it is also clear from Ostler and McGee, *Id.*, that the court Supreme Court of Utah arrived at its ruling in each case without addressing the question of whether the thirty day limit on filing a motion to withdraw a plea is jurisdictional.

Approximately eight years after his conviction for rape of a child, the defendant in State v. Reyes, 2002 UT 13, 40 P 3d 630 filed a *pro se* motion in the district court under Rule 22(e) of the Utah Rules of Criminal Procedure to correct an illegal or improper sentence. In his appeal to the Supreme Court of Utah of the denial of his motion, the defendant failed to raise the issue of illegal or improper sentence in his brief or at oral argument and therefore waived that issue.

Instead, he attacked his guilty plea, arguing that the trial court committed plain error by failing to strictly comply with Rule 11 of the Utah Rules of Criminal Procedure. The Supreme Court held that it did not have jurisdiction to address this issue because the defendant had not filed a motion to withdraw a guilty plea within thirty days after the entry of the plea.

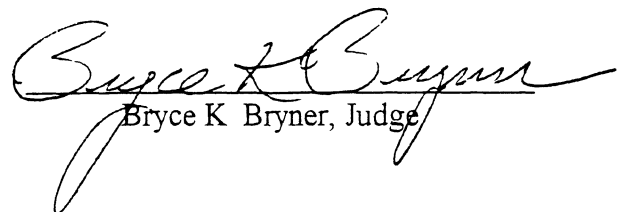
Although the defendant correctly states that Reyes only addressed the issue of whether the supreme court had jurisdiction to address the validity of a plea when the defendant had never moved to withdraw it in the trial court, there is language in the decision which persuades this court that the thirty day time limit is a jurisdictional bar to motions to withdraw a plea filed more than thirty days after final disposition. The court stated

We have held that failure to [file a motion to withdraw a plea within thirty days after final disposition] extinguishes a defendant's right to challenge the validity of the guilty plea on appeal. Accordingly, because Reyes did not move to withdraw his guilty plea within thirty days after the entry of the plea, we lack jurisdiction to address the issue on appeal. Id. at p. 631.

In the above extract the Supreme Court makes reference to the failure of Mr. Reyes to file a motion to withdraw his guilty plea within thirty days after entry of the plea [final disposition]. The court therefore finds that the thirty day period is deemed by the Supreme Court to be critical in preserving the right to challenge the plea on appeal. If the thirty day time period is critical in that context, it follows that filing a motion to withdraw a guilty plea or no contest plea within thirty days after final disposition would also be critical at the trial court level.

Because the defendant did not file his Motion to Withdraw Plea of guilty within thirty days after final disposition in the district court, the court lacks jurisdiction to consider the motion and the motion is dismissed.

DATED this 10th day of October, 2002


Bryce K. Bryner, Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 981700132 by the method and on the date specified.

METHOD	NAME
Mail	DAVID A BLACKWELL ATTORNEY PLA Emery County Courthouse P. O. Box 249 Castle Dale, UT 84513
Mail	STEPHEN R. MCCAUGHEY ATTORNEY DEF 10 WEST BROADWAY SUITE 650 SALT LAKE CITY UT 84101

Dated this 11th day of October, 2002.

W. D. Dainoff
Deputy Court Clerk